

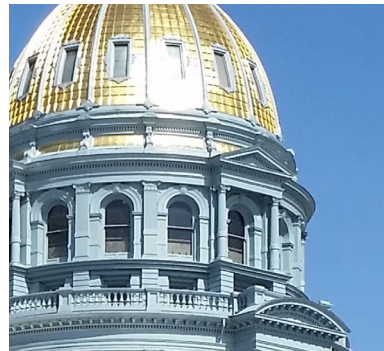
# 2022

Report to the Colorado General Assembly

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## Legislative Oversight Committee Concerning Tax Policy



Prepared by Legislative Council Staff  
Research Publication No. 779  
December 2022

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# **Legislative Oversight Committee Concerning Tax Policy**

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Representative Adrienne Benavidez, Vice-Chair

Senator Chris Kolker  
Senator Larry Liston

Representative Shannon Bird  
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***December 2022***

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November 2022

To Members of the Seventy-third General Assembly:

Submitted herewith is the final report of the Legislative Oversight Committee Concerning Tax Policy. This committee was created pursuant to Article 21 of Title 39, Colorado Revised Statutes. The purpose of this committee is to review the state's current tax policy and the tax expenditure reports from the Office of the State Auditor.

At its meeting on October 14, 2022 the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills therein for consideration in the 2023 session was approved.

Sincerely,

/s/ Representative Alec Garnett  
Chair

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The text of each bill is included as Attachments A through E after the resource materials page(s).

*This report is also available online at:*

*<https://leg.colorado.gov/committees/legislative-oversight-committee-concerning-tax-policy-task-force/2022-regular-session>*



## **Committee Charge**

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The Legislative Oversight Committee Concerning Tax Policy (committee) is charged with reviewing the state's current tax policy and the evaluations of tax expenditures that are statutorily completed by the Office of the State Auditor. The committee is also charged with oversight of the Task Force Concerning Tax Policy (task force). For purposes of the committee's work, tax policy includes:

- decisions by the state or local governments regarding taxes that have or may be levied; and
- analysis of the benefits and burdens of the state's overall tax structure with respect to the promotion of certainty, fairness, adequacy, transparency, and administrative ease.

In addition, the committee must annually define in writing the scope of tax policy to be considered for the committee and task force. For 2022, the scope of tax policy to be considered for the committee is:

- tax expenditure evaluations produced by the Office of the State Auditor, and the policy considerations contained therein;
- recommendations, proposals, and studies arising from the work of the task force; and
- other tax expenditure policy considerations arising during the work of the committee.

For 2022, the scope of tax policy to be considered for the task force is:

- applying the state income tax to federal adjusted gross income (AGI) rather than federal taxable income; and
- options for expanding the sales and use tax to apply to services, including but not limited to tangible personal property services, real property services, and/or personal and professional services, with attention to the long-term impacts on the tax base, the effects on households of different incomes, business-to-business transactions, vertically integrated businesses, and tax pyramiding.

## **Committee Activities**

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The committee held four meetings during the 2022 interim. Briefings and presentations were made by the task force, the Office of the State Auditor, the Office of State Planning and Budgeting, the Department of Revenue, the Lincoln Institute on Land Policy, the Premium Cigar Coalition, the Cigar Association of America, and members of the public on a wide range of subjects, including:

- the report of the task force on the taxation of short-term rentals;
- the Office of the State Auditor's tax expenditure evaluation reports;
- severance taxes;
- the sales and use taxation of services;
- property taxes; and
- the taxation of tobacco products and remote retail sellers.

The following sections discuss the committee's activities during the 2022 interim.

## **Update from the Task Force Concerning Tax Policy**

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The committee received an update on the work of the task force and discussed the task force's report on the property tax treatment of short-term rentals. The committee also updated the scope of the tax policy to be considered by the task force for the 2022 interim. The scope includes:

- applying the state income tax to federal adjusted gross income rather than federal taxable income; and
- options for expanding the sales and use tax to apply to services, including but not limited to tangible personal property services, real property services, and/or personal and professional services, with attention to the long-term impacts on the tax base, the effects on households of different incomes, business-to-business transactions, vertically integrated businesses, and tax pyramiding.

The task force continues to meet during 2022 legislative interim to discuss the scope listed above.

## **Office of the State Auditor Tax Expenditure Evaluations**

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Representatives of the OSA presented to the committee on their tax expenditure evaluation reports with policy considerations. OSA highlighted several categories of expenditures, including: income tax, enterprise zone tax, severance tax, sales and use tax, and insurance premium tax. In total, the OSA presented evaluation reports on 21 tax expenditures to the committee:

- enterprise zone tax expenditures;
- childcare contribution credit;
- corporate condemnation capital gains income tax deduction;
- Colorado alternative minimum tax credit;
- downloaded software exemption;
- aircraft used in interstate commerce exemption;
- oil and gas severance tax ad valorem credit;
- oil and gas severance tax stripper well exemption;
- impact assistance credits;
- oil shale tax expenditures;
- metallic minerals threshold exemption;
- metallic minerals ad valorem credit;
- molybdenum ore tonnage exemption;
- insurance premium tax expenditures;
- fraternal society exemption;
- tax-exempt organization insurance premium tax deduction;
- employee retirement plan insurance premium tax deduction;
- unauthorized insurance premium tax expenditures;
- longterm care insurance credit;
- in-state investment pre-1959 premium tax deduction; and
- crop hail insurance premium tax exemption.

Information on the tax expenditure evaluation reports covered may be found here: <https://tinyurl.com/jvwwn9v>.

**Committee recommendations.** As a result of its discussions, the committee recommends Bill A, Bill D, and Bill E. Bill A repeals several infrequently used tax expenditures. Bill D increases both the federal taxable income threshold for taxpayers to be eligible to claim the longterm care tax credit, and the maximum credit amount allowable per taxpayer per year. Bill E increases the tax rate that applies to insurance premiums paid to an unauthorized insurer from 2.25 percent to 3.0 percent beginning January 1, 2024. In addition, the committee recommended that bills on crop insurance, the childcare contribution credit, and the downloaded software sales tax exemption be drafted, but the draft bills were not recommended by the committee.

## **Severance Taxes**

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A representative from the Office of State Planning and Budgeting (OSPB) presented to the committee on Colorado severance taxes. The presentation included an overview of severance taxes in Colorado, severance tax collections, and severance tax revenues and distribution. The presentation also included information on severance tax volatility, U.S. and Colorado oil production, and an update on the Severance Tax Working Group created by [Senate Bill 21-281](#) and [House Bill 22-1391](#). OSPB's presentation may be found here: <https://tinyurl.com/yc6ezhv8>.

## **Sales and Use Taxation of Services**

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Representatives from the Department of Revenue (DOR) discussed the sales and use taxation of services. The presentation provided background information on the sales and use tax as well the current law in Colorado. Department staff discussed topics to consider in determining what services should be taxed and noted several administrative, practical, and legal issues related to expanding the sales and use tax to services. Their presentation may be found here: <https://tinyurl.com/2yek7b4h>.

At the direction of the committee, the task force is continuing to study this issue during the 2022 legislative interim.

## **National Perspective on Property Taxes**

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A representative of the Lincoln Institute on Land Policy presented to the committee a national perspective on property tax and how Colorado compares with others states. The presentation focused on an overview of property taxes in the United States and highlighted the distinctive features of Colorado's property tax system. The presentation also included information on state-imposed property tax limits. The presentation may be found here: <https://tinyurl.com/3yh92frz>.



## Taxation of Tobacco Products and Remote Retail Sellers

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Representatives of the Premium Cigar Coalition and the Cigar Association of America discussed [House Bill 20-1427](#) and collecting excise tax from delivery sellers. The tobacco products excise is a wholesale-level tax imposed upon distributors of tobacco products, including cigars and pipe tobacco. The representatives discussed some obstacles and concern related to compliance for online cigar and pipe tobacco retailers and brought forth a proposal to address their concerns. In addition, the Department of Revenue presented their view of the excise tax issues and suggested statutory changes to improve administration. Material from the presentations may be found here: <https://tinyurl.com/ym3kt46d>.

**Committee recommendations.** As a result of its discussions, the committee recommends Bill B, which concerns the taxation of tobacco products by remote sellers.

## Additional Committee Recommendations

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The committee also recommended Bill C. The bill expands the state earned income tax credit and child tax credit.

**Earned income tax credit.** The Colorado earned income tax credit (EITC) is available to taxpayers who claim the federal EITC, and to taxpayers who would otherwise be able to claim the federal EITC but who are ineligible because they do not have a valid social security number. The Colorado EITC is a refundable credit calculated as a percentage of the federal EITC. Beginning in tax year 2024, the bill increases the Colorado EITC from 25 percent of the federal EITC to 40 percent of the federal EITC.

**Child tax credit.** Starting in tax year 2022, the state child tax credit (CTC) is available for single income tax filers with less than \$75,000 and for joint filers with less than \$85,000, in federal AGI, who claimed the federal CTC, or would otherwise be able to claim the federal CTC but who are ineligible because one or more of their qualifying children does not have a valid social security number.

Beginning in tax year 2024, the bill increases the amounts of the CTC, with the credit amount based on the taxpayer's filing status and income. The tax credit is a refundable credit calculated as a percentage of the federal CTC. The state CTC is available for eligible taxpayers' children under the age of six. The bill expands the definition of "eligible child" to match that of the federal credit, which is available to eligible taxpayers' children under the age of 17. Beginning in tax year 2024, the bill requires that DOR adjust the federal AGI thresholds for inflation, as measured by the Denver-Aurora-Lakewood consumer price index or its successor.

## Summary of Recommendations

As a result of the committee's activities, the committee recommended five bills to the Legislative Council for consideration in the 2023 session. At its meeting on October 14, 2022, the Legislative Council approved the five recommended bills for introduction. The approved bills are described below.

### **Bill A — Repeal of Infrequently Used Tax Expenditures**

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The bill eliminates a number of tax expenditures, effective January 1, 2024, including:

- the insurance premium tax exemption for mutual protective associations that write only crop hail insurance;
- the insurance premium tax deduction for policies issued prior to 1959 by insurance companies making investments in Colorado;
- the income tax deduction for corporate capital gains from involuntary conversion;
- the income tax deduction for depletion of oil shale in addition to the federal depletion amount;
- the corporate income tax credit for providing assistance in solving the local government impacts of new mining or milling operations;
- the severance tax deduction for oil shale equipment and machinery;
- the severance tax deduction for oil shale processing and royalty costs;
- the severance tax rate reductions for oil shale producers;
- the severance tax exemption for oil shale or shale oil severed at non-commercial production rates; and
- the severance tax credit for providing assistance in solving the local government impacts of new mineral or mineral fuel severance operations.

### **Bill B — Taxation Tobacco Products Remote Retail Sellers**

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The bill makes adjustments to the remittance of taxes on tobacco and nicotine products. First, the bill separates the current tobacco tax treatment of out-of-state retailers, which was established in Proposition EE, into two distinct, but largely parallel, tax treatments. Second, the bill clarifies how the "manufacturer's list price" (the price used to determine the amount of taxes owed) should be calculated in specific instances.

### **Bill C — Earned Income & Child Tax Credits**

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Beginning in tax year 2024, the bill increases the Colorado earned income tax credit (EITC) from 25 percent of the federal EITC to 40 percent of the federal EITC. The bill also increases the amounts of the child tax credit (CTC), with the credit amount based on the taxpayer's filing status and income

beginning in tax year 2024. For purposes of the state CTC, the bill expands the definition of “eligible child” from under the age of 6 to under the age of 17, bringing the state CTC in line with the federal CTC. Finally, beginning in tax year 2024, the bill requires that DOR adjust the federal AGI thresholds for inflation.

## **Bill D — Tax Credit for Purchase Long-term Care Insurance**

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The bill modifies the state income tax credit for purchasing long-term care insurance policies beginning in tax year 2024. The bill increases both the federal taxable income threshold for taxpayers to be eligible to claim the tax credit, and the maximum credit amount allowable per taxpayer per year.

## Resource Materials

Meeting summaries are prepared for each meeting of the commission and subcommittee, and contain all handouts provided to them. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver (303-866-2055). The listing below contains the dates of committee meetings and the topics discussed at those meetings. Meeting summaries are also available on our website at:

<https://leg.colorado.gov/content/committees>

### Meeting Date and Topics Discussed

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June 24, 2022

- ♦ Update on the Task Force Concerning Tax Policy
- ♦ Scope of the tax policy to be considered

July 18, 2022

- ♦ Severance taxes
- ♦ Sales and use taxation of services
- ♦ Office of the State Auditor policy considerations
- ♦ Written scope of tax policy for the task force

August 12

- ♦ National perspective on property taxes
- ♦ House Bill 20-1427 and collecting excise taxes from delivery sellers
- ♦ Department of Revenue: collecting excise taxes from delivery sellers
- ♦ Office of the State Auditor policy considerations
- ♦ Public testimony
- ♦ Bill draft requests

September 23

- ♦ Public testimony
- ♦ Bill draft request approval

First Regular Session  
Seventy-fourth General Assembly  
STATE OF COLORADO

Attachment A

**BILL A**

LLS NO. 23-0122.01 Pierce Lively x2059

**HOUSE BILL**

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**HOUSE SPONSORSHIP**

**Benavidez**, Bird

**SENATE SPONSORSHIP**

**Hansen and Liston**, Kolker

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**House Committees**

**Senate Committees**

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**A BILL FOR AN ACT**

101     **CONCERNING THE REPEAL OF INFREQUENTLY USED TAX**  
102     **EXPENDITURES.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Legislative Oversight Committee Concerning Tax Policy.** The bill repeals the following infrequently used tax expenditures:

- The crop hail insurance premium tax exemption (**section 1** of the bill);
- The in-state investment pre-1959 insurance premium tax deduction (**section 1**);

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

- The corporate condemnation capital gains income tax deduction (**section 2**);
- The oil shale excess percentage depletion income tax deduction (**section 2**);
- The mining and milling impact assistance corporate income tax credit (**section 3**);
- The oil shale equipment and machinery severance tax deduction (**section 4**);
- The oil shale processing severance tax deduction (**section 4**);
- The oil shale severance tax rate reductions (**section 4**);
- The oil shale noncommercial production severance tax exemption (**section 4**); and
- The mineral and mineral fuels impact assistance severance tax credit (**section 5**).

**Sections 6 and 7** make conforming amendments.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 10-3-209, **repeal**  
 3 (1)(d)(II), (1)(d)(III), and (1)(g) as follows:

4 **10-3-209. Tax on premiums collected - exemptions - penalties.**

5 (1) (d) (II) ~~Mutual protective associations writing crop hail insurance~~  
 6 ~~only and operating on an advance premium basis shall be exempt from the~~  
 7 ~~taxes provided by this section on that portion of the premium designated~~  
 8 ~~to the loss fund.~~

9 (III) ~~There shall be no tax under this section in the case of any~~  
 10 ~~policy issued prior to 1959 by a domestic insurance company organized~~  
 11 ~~under the laws of this state, maintaining its principal place of business in~~  
 12 ~~this state, and having thirty percent or more of its assets invested in bonds~~  
 13 ~~or warrants of this state or of any county, city, town, or district of this~~  
 14 ~~state, and other property within this state in which such company is~~  
 15 ~~permitted by law to invest its funds, and the premium of which policy was~~  
 16 ~~fixed and is contractually binding upon the company.~~

1           (g) ~~For the purpose of obtaining the exemption provided in~~  
2 ~~paragraph (d)(III) of this subsection (1), the term "other property within~~  
3 ~~this state" means: Real estate and tangible personal property within this~~  
4 ~~state; first mortgages upon real estate within this state; stocks or bonds of~~  
5 ~~corporations organized under the laws of this state; deposits with banks,~~  
6 ~~trust companies, savings and loan associations, building and loan~~  
7 ~~associations, or financial institutions domiciled within this state; stocks~~  
8 ~~or bonds of foreign or alien corporations which on the date of purchase~~  
9 ~~of such stocks or bonds have fifty percent or more of their assets invested~~  
10 ~~in this state; and accounts of agents who are residents of this state.~~

11           **SECTION 2.** In Colorado Revised Statutes, 39-22-304, **amend**  
12 (3)(d)(I) and (3)(h); and **add** (3)(d)(IV) as follows:

13           **39-22-304. Net income of corporation - legislative declaration**  
14 **- definitions - repeal.** (3) There shall be subtracted from federal taxable  
15 income:

16           (d) (I) PRIOR TO JANUARY 1, 2024, the portion of any gain  
17 received during the taxable year from a qualified sale.

18           (IV) THIS SUBSECTION (3)(d) IS REPEALED, EFFECTIVE DECEMBER  
19 31, 2028.

20           (h) (I) PRIOR TO JANUARY 1, 2024, an amount equal to the  
21 difference between the depletion allowance permitted under the internal  
22 revenue code for oil shale and an amount which would be permitted as  
23 the depletion allowance for oil shale if: The percentage depletion rate  
24 were twenty-seven and one-half percent; and the crushing, retorting,  
25 condensing, and other processes by which oil, gas, or both oil and gas are  
26 removed from oil shale, were deemed to be treatment processes  
27 considered as mining.

1 (II) THIS SUBSECTION (3)(h) IS REPEALED, EFFECTIVE DECEMBER  
2 31, 2028.

3 **SECTION 3.** In Colorado Revised Statutes, **repeal** 39-22-307 as  
4 follows:

5 **39-22-307. Credit allowed for prior payment of impact**  
6 **assistance.** ~~(1) For income tax years commencing on or after January 1,~~  
7 ~~1981, there shall be allowed, as a credit against any taxes imposed by this~~  
8 ~~part 3 on income derived from a new mining, milling, or mining and~~  
9 ~~milling operation or expansion of an existing mining, milling, or mining~~  
10 ~~and milling operation, an amount equal to the value of eligible~~  
11 ~~contributions by the taxpayer made prior to the commencement of~~  
12 ~~operations by the new operation or by the expansion of an existing~~  
13 ~~operation to assist in solving the impact problems of units of local~~  
14 ~~government resulting from the initiation of a new operation or an~~  
15 ~~expansion of an existing operation. The credit allowed by this section~~  
16 ~~shall be allowed only on a new operation or an expansion of an existing~~  
17 ~~operation located within Colorado which begins actual operations~~  
18 ~~subsequent to June 30, 1980. Such credit shall be based on the ratio of the~~  
19 ~~gross income attributable to such new operation or expansion to the total~~  
20 ~~Colorado gross income multiplied by the Colorado income tax liability for~~  
21 ~~the year for which the credit is claimed.~~

22 ~~(2) Eligible contributions, for the purpose of such credit, shall~~  
23 ~~include the donation of property or payments to units of local government~~  
24 ~~for use in the planning or construction or expansion of public facilities,~~  
25 ~~limited to roads, schools, water facilities, sewerage facilities, police and~~  
26 ~~fire protection facilities, and hospitals, which are deemed to be~~  
27 ~~neecessitated by the initiation of a new operation or an expansion of an~~



1 existing operation. In order to qualify as an eligible contribution for  
2 credit, the following requirements shall be fulfilled:

3 (a) Each contribution shall be based on an agreement between the  
4 taxpayer and a unit of local government specifying the need for the  
5 contribution and its nature, value, and purpose. The agreement shall be  
6 submitted for review to each unit of local government that is impacted by  
7 the new operation or the expansion of an existing operation. Each  
8 impacted unit of local government may send comments on the agreement  
9 to the parties to the agreement and the energy impact assistance advisory  
10 committee pursuant to section 34-63-102 (5)(b)(VI):

11 (b) Each contribution must be determined to be eligible for credit,  
12 after joint submission by the taxpayer and the unit of local government,  
13 by the executive director of the department of local affairs upon the  
14 recommendation of the energy impact assistance advisory committee:

15 (c) Certification of eligibility for credit of a contribution of a  
16 specified value must be made by the executive director of the department  
17 of local affairs to the executive director of the department of revenue, the  
18 unit of local government, and the taxpayer. Certification of eligibility for  
19 credit shall not be made to the specified value of any contribution  
20 submitted, but to a prorated value of the contribution, if the total of all  
21 claims received by the department of local affairs exceeds one hundred  
22 thousand dollars:

23 (3) A taxpayer may claim credit against income tax liability during  
24 the first five years of operations by a new operation or an expansion of an  
25 existing operation in the amount of the total value of all contributions  
26 certified as eligible for credit by submitting with the annual declarations  
27 and returns required by section 39-29-112 the certifications of eligibility

1     ~~for such credit. Any unabsorbed credit may not be claimed as a refund or~~  
2     ~~applied as a credit to estimated tax.~~

3             **SECTION 4.** In Colorado Revised Statutes, 39-29-107, **amend**  
4     (1), (2), (3), and (3.1) as follows:

5             **39-29-107. Tax on severance of oil shale - repeal.**

6     (1) (a) (I) PRIOR TO JANUARY 1, 2024, in addition to any other tax, there  
7     shall be levied, collected, and paid for each taxable year a tax upon the  
8     severance of oil shale as to all such severance occurring on and after  
9     January 1, 1978. Such tax shall be levied against every person engaged in  
10    the severance of oil shale. Subject to the provisions of subsections (2) and  
11    (3) of this section, such tax shall be levied on the gross proceeds from  
12    each commercial oil shale facility at a rate of four percent of such gross  
13    proceeds.

14            (II) THIS SUBSECTION (1)(a) IS REPEALED, EFFECTIVE DECEMBER  
15    31, 2027.

16            (b) ON AND AFTER JANUARY 1, 2024, IN ADDITION TO ANY OTHER  
17    TAX, THERE SHALL BE LEVIED, COLLECTED, AND PAID FOR EACH TAXABLE  
18    YEAR A TAX UPON THE SEVERANCE OF OIL SHALE. SUCH TAX SHALL BE  
19    LEVIED AGAINST EVERY PERSON ENGAGED IN THE SEVERANCE OF OIL  
20    SHALE. SUCH TAX SHALL BE LEVIED ON THE GROSS PROCEEDS FROM EACH  
21    COMMERCIAL OIL SHALE FACILITY AT A RATE OF FOUR PERCENT OF SUCH  
22    GROSS PROCEEDS.

23            (2) (a) PRIOR TO JANUARY 1, 2024, the tax shall only have  
24    application to a commercial oil shale facility one hundred eighty days  
25    after the facility commences commercial production, as follows:

26 <b>Year</b>	<b>Fraction of tax imposed</b>
27	<b>by subsection (1)</b>

1 First year 1/4  
2 Second year 1/2  
3 Third year 3/4  
4 Fourth and each succeeding year Entire rate imposed by  
5 subsection (1).

6 (b) THIS SUBSECTION (2) IS REPEALED, EFFECTIVE DECEMBER 31,  
7 2027.

8 (3) (a) PRIOR TO JANUARY 1, 2024, the production of the first  
9 fifteen thousand tons per day of oil shale or ten thousand barrels per day  
10 of shale oil, whichever is greater, shall be exempt from the tax.

11 (b) THIS SUBSECTION (3) IS REPEALED, EFFECTIVE DECEMBER 31,  
12 2027.

13 (3.1) (a) PRIOR TO JANUARY 1, 2024, the calculation of the daily  
14 production subject to the tax and to the exemption in subsection (3) of  
15 this section shall be determined by dividing the total production of a  
16 calendar month by the total number of days in such month.

17 (b) THIS SUBSECTION (3.1) IS REPEALED, EFFECTIVE DECEMBER 31,  
18 2027.

19 **SECTION 5.** In Colorado Revised Statutes, **repeal** 39-29-107.5  
20 as follows:

21 **39-29-107.5. Credit allowed for prior payment of impact**  
22 **assistance.** ~~(1) (a) There shall be allowed, as a credit against any taxes~~  
23 ~~imposed by this article on the severance of minerals or mineral fuels from~~  
24 ~~or for a new operation from or for which first severance occurs~~  
25 ~~subsequent to June 30, 1979, an amount equal to the value of approved~~  
26 ~~contributions by the taxpayer made prior to first severance of such~~  
27 ~~minerals or mineral fuels to assist in solving the impact problems of units~~

1 of local government resulting from the initiation of such new operation.

2 (b) ~~There shall be allowed, as a credit against any taxes imposed~~  
3 ~~by this article on the severance of minerals or mineral fuels from or for~~  
4 ~~an operation which has an increase in production from or for which~~  
5 ~~increased severance occurs subsequent to June 30, 1980, an amount equal~~  
6 ~~to the value of approved contributions by the taxpayer made to assist in~~  
7 ~~solving the impact problems of units of local government or local units~~  
8 ~~of government locally impacted by the increase in production of an~~  
9 ~~operation.~~

10 (c) ~~There shall be allowed, pursuant to an agreement between or~~  
11 ~~on behalf of the taxpayer and the unit of local government specified in~~  
12 ~~subparagraph (f) of paragraph (a) of subsection (2) of this section as a~~  
13 ~~credit against any taxes imposed by this article on the severance of~~  
14 ~~minerals or mineral fuels, in addition to any amounts determined under~~  
15 ~~paragraphs (a) and (b) of this subsection (1) and subsection (2) of this~~  
16 ~~section, an amount equal to three-fourths of one percent per month times~~  
17 ~~the amount of approved contributions by a taxpayer for each month that~~  
18 ~~any approved contribution precedes the month in which said approved~~  
19 ~~contribution is credited against a taxpayer's yearly severance tax liability.~~  
20 ~~Any amounts of approved contributions credited against a taxpayer's~~  
21 ~~yearly severance tax liability shall be applied to reduce the amount, if any,~~  
22 ~~of approved contributions not previously credited, and the additional~~  
23 ~~percentage provided in this paragraph (c) shall apply solely to said~~  
24 ~~reduced amount of approved contributions.~~

25 (2) (a) ~~Approved contributions, for the purpose of such credits,~~  
26 ~~shall include the contribution of property or payment of money to units~~  
27 ~~of local government or local units of government locally impacted, for~~

1 use in planning, including financial, architectural, and engineering  
2 services, construction, or expansion of public facilities, including but not  
3 limited to county or municipal roads, schools, recreation facilities, water  
4 facilities, sewage facilities, police and fire protection facilities, and  
5 hospitals, which are deemed to be necessitated by the initiation of a new  
6 operation or increase in production of an existing operation. In addition,  
7 subject to the agreement reached pursuant to paragraph (c) of subsection  
8 (1) of this section, approved contributions may also include any loss  
9 sustained by reason of the sale of any bonds by the taxpayer who  
10 purchased such bonds, the proceeds of which bonds are used in the  
11 planning, construction, or expansion of any such public facilities by a unit  
12 of local government or local unit of government locally impacted, and any  
13 loss by reason of the default on loans made by a taxpayer or satisfaction  
14 of a guaranty obligation of the taxpayer arising out of the issuance of such  
15 bonds, whether or not such bonds are purchased by the taxpayer. Such  
16 losses shall be approved contributions as of the date of the making of a  
17 loan, the date of issuance of the bonds, or the date of entering into the  
18 guaranty obligation; except that, for purposes of the additional credit  
19 allowed pursuant to paragraph (c) of subsection (1) of this section, the  
20 date of the approved contribution shall be the date of default on any such  
21 loan, the date of loss on any such bond, or the date of satisfaction of any  
22 such guaranty obligation. In no event shall the total amount of approved  
23 contributions by a taxpayer exceed fifty percent of the severance tax  
24 liability which the taxpayer anticipates will be incurred during the first ten  
25 years of severance from a new operation or fifty percent of the increased  
26 severance tax liability which the taxpayer anticipates will be incurred  
27 during the first ten years of severance from an expanded existing

1     ~~operation plus the amounts calculated pursuant to paragraph (c) of~~  
2     ~~subsection (1) of this section. In order for an approved contribution to~~  
3     ~~qualify for credit, the following requirements shall be fulfilled:~~

4             ~~(I) Each contribution shall be based on an agreement between or~~  
5     ~~on behalf of the taxpayer and a unit of local government or local unit of~~  
6     ~~government locally impacted, specifying the need for such contribution~~  
7     ~~and its nature, value or amount, and purpose;~~

8             ~~(H) Each contribution must be acted upon for credit and, if~~  
9     ~~approved, a certificate of eligibility issued, within ninety days after joint~~  
10    ~~submission by the taxpayer and the unit of local government, or local unit~~  
11    ~~of government locally impacted, by the executive director of the~~  
12    ~~department of local affairs upon the recommendation of the energy~~  
13    ~~impact assistance advisory committee created by section 34-63-102~~  
14    ~~(5)(b), C.R.S., and failure to act upon the eligibility within said ninety~~  
15    ~~days shall be deemed as approval and certification of the contribution;~~  
16    ~~and~~

17            ~~(HH) Certification of eligibility for credit of a contribution of a~~  
18    ~~specified value or amount must be transmitted by the executive director~~  
19    ~~of the department of local affairs to the executive director of the~~  
20    ~~department of revenue, the unit of local government or local unit of~~  
21    ~~government locally impacted, and the taxpayer.~~

22            ~~(b) In the event that the taxpayer purchases any bonds relating to~~  
23    ~~public facilities as provided in this subsection (2) or makes any loans or~~  
24    ~~guaranty arising out of the issuance of such bonds, the contribution, for~~  
25    ~~purposes of subparagraphs (I) and (H) of paragraph (a) of this subsection~~  
26    ~~(2), shall be the purchase price of any bonds purchased, the face value of~~  
27    ~~any bonds guaranteed, or the amount loaned; except that the taxpayer~~

1 shall be entitled to claim as a credit pursuant to subsection (3) of this  
2 section only the amount of loss on any such bonds, the amount paid in  
3 satisfaction of any such guaranty, or the amount of default on any such  
4 bonds.

5 (c) In order for a loss from the purchase and sale of bonds to  
6 qualify as an approved contribution:

7 (I) The purchase must arise out of the original distribution of such  
8 bonds; and

9 (II) The sale of such bonds must be made through a registered  
10 broker; and

11 (III) The sale must take place within five business days of the  
12 purchase.

13 (3) A taxpayer shall be entitled to credit against its severance tax  
14 liability in an amount equal to the total of all contributions made and  
15 certified as eligible for credit plus the amounts calculated pursuant to  
16 paragraph (c) of subsection (1) of this section. The taxpayer may claim  
17 such credit by submitting with the annual declarations and returns  
18 required by section 39-29-112 the certifications of eligibility for such  
19 credit or evidence regarding deemed certification, and in the case of  
20 losses sustained by reason of the sale of any bonds purchased by the  
21 taxpayer, by reason of satisfaction of a guaranty obligation of the taxpayer  
22 arising out of the issuance of bonds, or by reason of loans made by the  
23 taxpayer, evidence of such losses. The amount of credit available in any  
24 one taxable year, including carry-overs, shall not exceed the taxpayer's  
25 severance tax liability in such year. Any excess shall be carried over and  
26 shall be available as a credit in the next succeeding year or years subject  
27 to the same annual limitation.

1           (4) For the purposes of this section, minerals or mineral fuels shall  
2 include, but not be limited to, oil shale, crude oil, natural gas, and oil and  
3 gas.

4           (5) ~~The executive director of the department of local affairs, or his~~  
5 ~~or her designee; the executive director of the department of natural~~  
6 ~~resources, or his or her designee; the executive director of the department~~  
7 ~~of revenue, or his or her designee; and the energy impact assistance~~  
8 ~~advisory committee created in section 34-63-102 (5)(b)(I), C.R.S., shall~~  
9 ~~work together with the executive director, or his or her designee, of the~~  
10 ~~Colorado municipal league, or its successor organization; the executive~~  
11 ~~director, or his or her designee, of Colorado counties, incorporated, or its~~  
12 ~~successor organization; representatives of the energy and mineral~~  
13 ~~industry; and any other stakeholders to determine how best to improve the~~  
14 ~~impact assistance credit established in this section so that any major~~  
15 ~~infrastructure needs of communities impacted by the energy and mineral~~  
16 ~~industry are addressed. The group specified in this subsection (5) shall~~  
17 ~~recommend any proposed legislation to the agriculture, livestock, and~~  
18 ~~natural resources committee of the house of representatives and the~~  
19 ~~agriculture, natural resources, and energy committee of the senate, or any~~  
20 ~~successor committees, no later than January 31, 2009.~~

21           **SECTION 6.** In Colorado Revised Statutes, 39-21-112, **amend**  
22 (1) as follows:

23           **39-21-112. Duties and powers of executive director.** (1) It is  
24 the duty of the executive director to administer the provisions of this  
25 ~~article~~ ARTICLE 21, and ~~he or she~~ THE EXECUTIVE DIRECTOR has the power  
26 to adopt, amend, or rescind such rules not inconsistent with the provisions  
27 of this ~~article~~ ARTICLE 21, articles 22 to 29 of this ~~title~~ TITLE 39, and



1 article 3 of title 42 ~~C.R.S.~~, and, subject to other provisions of law relating  
2 to the promulgation of rules, to appoint, pursuant to section 13 of article  
3 XII of the state constitution, such persons, to make such expenditures, to  
4 require such reports, to make such investigations, and to take such other  
5 action as ~~he or she~~ THE EXECUTIVE DIRECTOR deems necessary or suitable  
6 to that end. The executive director shall determine ~~his or her own~~ THE  
7 organization and methods of procedure in accordance with the provisions  
8 of this ~~article~~ ARTICLE 21. For the purpose of ascertaining the correctness  
9 of any return or for the purpose of making an estimate of the tax due from  
10 any taxpayer, the executive director has the power to examine or cause to  
11 be examined by any employee, agent, or representative designated by ~~him~~  
12 ~~or her~~ THE EXECUTIVE DIRECTOR for that purpose any books, papers,  
13 records, or memoranda bearing upon the matters required to be included  
14 in the return. ~~In the exercise of rule-making authority as to article 29 of~~  
15 ~~this title, as granted by the general assembly pursuant to this subsection~~  
16 ~~(1), the executive director, in interpreting section 39-29-107.5 (1)(c), shall~~  
17 ~~not have authority to reduce the amount of any approved contributions not~~  
18 ~~previously credited by applying the amount of any additional percentage~~  
19 ~~previously allowed pursuant to said section.~~ In the exercise of  
20 rule-making authority as to article 29 of this ~~title~~ TITLE 39, as granted by  
21 the general assembly pursuant to this subsection (1), the executive  
22 director may not readopt any rule, or portion thereof, disapproved on or  
23 after July 1, 1982, by the general assembly pursuant to section 24-4-103  
24 (8)(d) ~~C.R.S.~~, without the approval of the general assembly.

25 **SECTION 7.** In Colorado Revised Statutes, 39-29-108, **repeal** (3)  
26 as follows:

27 **39-29-108. Allocation of severance tax revenues - definitions**

1     ~~- repeal. (3) Effective July 1, 1981, the total gross receipts from any~~  
2     ~~taxpayer who has previously claimed the full amount of the credit for an~~  
3     ~~approved contribution under section 39-29-107.5 shall be allocated solely~~  
4     ~~to the state severance tax trust fund until such time as there is allocated~~  
5     ~~to such fund, in addition to any current allocation to such fund, an amount~~  
6     ~~equal to what would have been allocated to such fund during the time the~~  
7     ~~taxpayer claimed such credit.~~

8             **SECTION 8. Act subject to petition - effective date.** This act  
9     takes effect at 12:01 a.m. on the day following the expiration of the  
10    ninety-day period after final adjournment of the general assembly; except  
11    that, if a referendum petition is filed pursuant to section 1 (3) of article V  
12    of the state constitution against this act or an item, section, or part of this  
13    act within such period, then the act, item, section, or part will not take  
14    effect unless approved by the people at the general election to be held in  
15    November 2024 and, in such case, will take effect on the date of the  
16    official declaration of the vote thereon by the governor.

First Regular Session  
Seventy-fourth General Assembly  
STATE OF COLORADO

Attachment B

**BILL B**

LLS NO. 23-0123.02 Pierce Lively x2059

**HOUSE BILL**

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**HOUSE SPONSORSHIP**

**Bird and Woog,**

**SENATE SPONSORSHIP**

**Liston,** Hansen

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**House Committees**

**Senate Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING THE TAXATION OF TOBACCO PRODUCTS.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Legislative Oversight Committee Concerning Tax Policy.** The bill categorizes the remote sales of certain kinds of tobacco products for purposes of establishing the regulation and taxation of the sales. The bill exempts transactions involving tobacco products other than smokeless tobacco products or roll-your-own tobacco products from the definition of "delivery sale" and instead defines the term "remote retail sale" to include these transactions. The bill then establishes a system for the taxation and licensing of these "remote retail sales" that substantively

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

mirrors the current system of taxation and licensing for "delivery sales".

The bill also resolves an ambiguity about how the "manufacturer's list price" of a tobacco product is determined for both "delivery sales" and "remote retail sales".

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 39-28.5-101  
3 as follows:

4 **39-28.5-101. Definitions.** As used in this article 28.5, unless the  
5 context otherwise requires:

6 (1) "CONSUMER" MEANS ANY PERSON WHO HAS TITLE TO OR  
7 POSSESSION OF TOBACCO PRODUCTS FOR THE PERSON'S OWN USE OR  
8 CONSUMPTION IN THIS STATE AND NOT FOR RESALE.

9 ~~(1)~~ (2) (a) "Delivery sale" means the sale of SMOKELESS OR  
10 ROLL-YOUR-OWN tobacco products to a consumer in this state when:

11 ~~(a)~~ (I) The consumer submits an order for the SMOKELESS OR  
12 ROLL-YOUR-OWN tobacco products to a delivery seller for sale by means  
13 other than an over-the-counter sale on the delivery seller's premises,  
14 including, but not limited to, telephone or other voice transmission, the  
15 mail or other delivery service, or the internet or other online service; and

16 ~~(b)~~ (II) The SMOKELESS OR ROLL-YOUR-OWN tobacco products are  
17 delivered when the seller is not in the physical presence of the consumer  
18 when the consumer obtains possession of the tobacco products by use of  
19 a common carrier, private delivery service, mail, or any other means.

20 (b) "DELIVERY SALE" DOES NOT INCLUDE TRANSACTIONS  
21 INVOLVING ANY TOBACCO PRODUCTS OTHER THAN SMOKELESS TOBACCO  
22 PRODUCTS OR ROLL-YOUR-OWN TOBACCO PRODUCTS.

23 ~~(1-2)~~ (3) "Delivery seller" means a person located outside of this

1 state who makes delivery sales OF SMOKELESS OR ROLL-YOUR-OWN  
2 TOBACCO PRODUCTS.

3 ~~(1.4)~~ (4) "Department" means the department of revenue.

4 ~~(1.5)~~ (5) "Distributing subcontractor" means every person, firm,  
5 limited liability company, partnership, or corporation who purchases  
6 tobacco products from a distributor for resale to a retailer in this state.

7 ~~(2)~~ (6) "Distributor" means every person who:

8 (a) First receives tobacco products in this state;

9 (b) Sells tobacco products in this state and is primarily liable for  
10 the tobacco products tax on such products;

11 (c) First sells or offers for sale in this state tobacco products  
12 imported into this state from any other state or country; ~~or~~

13 (d) Is a delivery seller; OR

14 (e) IS A REMOTE RETAIL SELLER.

15 ~~(3)~~ (7) (a) "Manufacturer's list price" means, EXCEPT AS PROVIDED  
16 IN SUBSECTIONS (7)(b) AND (7)(c) OF THIS SECTION, the invoice price for  
17 which a manufacturer or supplier sells a tobacco product to a distributor  
18 OR REMOTE RETAIL SELLER exclusive of any discount or other reduction.

19 (b) FOR A DELIVERY OR REMOTE RETAIL SELLER, IF DETERMINING  
20 THE INVOICE PRICE DESCRIBED IN SUBSECTION (7)(a) OF THIS SECTION IS  
21 IMPRACTICABLE, THEN "MANUFACTURER'S LIST PRICE" MEANS THE  
22 AVERAGE OF THE ACTUAL PRICE PAID FOR THE TOBACCO PRODUCT'S STOCK  
23 KEEPING UNIT DURING THE PRECEDING CALENDAR YEAR. THE  
24 DEPARTMENT MAY, BY WRITTEN NOTICE TO THE DELIVERY OR REMOTE  
25 RETAIL SELLER, PROSPECTIVELY REQUIRE A DELIVERY OR REMOTE RETAIL  
26 SELLER TO CALCULATE THE TAX ON THE INVOICE PRICE IF THE  
27 DEPARTMENT FINDS THAT THE DELIVERY OR REMOTE RETAIL SELLER'S USE

1 OF THE AVERAGE PRICE PAID WAS FOR THE PURPOSE OF AVOIDING TAX.

2 (c) FOR A MANUFACTURER WHO IS ALSO A DELIVERY SELLER, A  
3 REMOTE RETAIL SELLER, OR A RETAILER, AND WHO SELLS A TOBACCO  
4 PRODUCT EXCLUSIVELY TO CONSUMERS AND NOT TO SUPPLIERS OR  
5 DISTRIBUTORS, "MANUFACTURER'S LIST PRICE" MEANS THE  
6 MANUFACTURER'S COST TO MANUFACTURE THE TOBACCO PRODUCT,  
7 WHICH INCLUDES THE MANUFACTURING OVERHEAD AND THE COST OF ALL  
8 DIRECT MATERIALS AND DIRECT LABOR USED.

9 ~~(3.3)~~ (8) "Modified risk tobacco product" means any tobacco  
10 product for which the secretary of the United States department of health  
11 and human services has issued an order authorizing the product to be  
12 commercially marketed as a modified risk tobacco product in accordance  
13 with 21 U.S.C. sec. 387k, or any successor section.

14 ~~(3.7)~~ (9) "Moist snuff" means any finely cut, ground, or powdered  
15 tobacco that is not intended to be smoked but does not include any finely  
16 cut, ground, or powdered tobacco that is intended to be placed in the nasal  
17 cavity.

18 (10) (a) "REMOTE RETAIL SALE" MEANS ANY SALE OF CIGARS OR  
19 PIPE OR OTHER SMOKING TOBACCO TO A CONSUMER IN THIS STATE WHEN:

20 (I) THE CONSUMER SUBMITS THE ORDER FOR THE SALE BY MEANS  
21 OF A METHOD OF VOICE TRANSMISSION, THE MAIL, OR AN ONLINE SERVICE,  
22 OR THE SELLER IS OTHERWISE NOT IN THE PHYSICAL PRESENCE OF THE  
23 BUYER WHEN MAKING THE REQUEST FOR PURCHASE OR ORDER; OR

24 (II) THE CIGARS OR PIPE OR OTHER SMOKING TOBACCO ARE  
25 DELIVERED TO THE BUYER BY COMMON CARRIER, PRIVATE DELIVERY  
26 SERVICE, OR OTHER METHOD OF REMOTE DELIVERY, OR THE SELLER IS NOT  
27 IN THE PHYSICAL PRESENCE OF THE BUYER WHEN THE BUYER OBTAINS

1 POSSESSION OF THE CIGARS OR PIPE OR OTHER SMOKING TOBACCO.

2 (b) "REMOTE RETAIL SALE" DOES NOT INCLUDE TRANSACTIONS  
3 INVOLVING CIGARETTES, SMOKELESS TOBACCO PRODUCTS, OR  
4 ROLL-YOUR-OWN TOBACCO PRODUCTS.

5 (11) "REMOTE RETAIL SELLER" MEANS A PERSON LOCATED  
6 OUTSIDE OF THIS STATE WHO MAKES REMOTE RETAIL SALES OF CIGARS OR  
7 PIPE TOBACCO.

8 (12) "ROLL-YOUR-OWN TOBACCO" MEANS ANY TOBACCO THAT,  
9 BECAUSE OF ITS APPEARANCE, TYPE, PACKAGING, OR LABELING, IS  
10 SUITABLE FOR USE AND LIKELY TO BE OFFERED TO, OR PURCHASED BY,  
11 CONSUMERS AS TOBACCO FOR MAKING CIGARETTES OR FOR USE AS  
12 WRAPPERS FOR CIGARETTES OR CIGARS.

13 ~~(4)~~ (13) "Sale" means any transfer, exchange, or barter, in any  
14 manner or by any means whatsoever, for a consideration, including all  
15 sales made by any person. The term includes:

16 (a) A gift by a person engaged in the business of selling tobacco  
17 products, for advertising, as a means of evading the provisions of this  
18 ~~article~~ ARTICLE 28.5 or for any other purposes whatsoever; ~~and~~

19 (b) A delivery sale; AND

20 (c) A REMOTE RETAIL SALE.

21 (14) "SMOKELESS TOBACCO" MEANS ANY FINELY CUT, GROUND,  
22 POWDERED, OR LEAF TOBACCO, OR OTHER PRODUCT CONTAINING  
23 TOBACCO, THAT IS INTENDED TO BE PLACED IN THE ORAL OR NASAL  
24 CAVITY OR OTHERWISE CONSUMED WITHOUT BEING COMBUSTED.

25 (15) "STOCK KEEPING UNIT" MEANS THE UNIQUE IDENTIFIER  
26 ASSIGNED BY THE DISTRIBUTOR OR REMOTE RETAIL SELLER TO VARIOUS  
27 ITEMS IN ORDER TO TRACK INVENTORY.

1           ~~(5)~~ (16) "Tobacco products" means cigars, ~~cheroots, stogies,~~  
2           ~~periques, granulated, plug cut, crimp cut, ready rubbed, and other~~  
3           ~~smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco,~~  
4           ~~fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings,~~  
5           ~~cuttings and sweepings of tobacco~~ PIPE TOBACCO, SMOKELESS TOBACCO,  
6           ROLL-YOUR-OWN TOBACCO, and other kinds and forms of tobacco,  
7           prepared in such manner as to be suitable for chewing or for smoking in  
8           a pipe or otherwise, or both for chewing and smoking, but does not  
9           include cigarettes ~~which~~ THAT are taxed separately pursuant to article 28  
10          of this ~~title~~ TITLE 39.

11           **SECTION 2.** In Colorado Revised Statutes, 39-28.5-102, **amend**  
12          (4)(c) and (4)(d); and **add** (1.5) and (4)(e) as follows:

13           **39-28.5-102. Tax levied.** (1.5) FOR ALL TOBACCO PRODUCTS  
14          SOLD BY REMOTE RETAIL SELLERS, THE TAX RATES DELINEATED IN  
15          SUBSECTION (1) OF THIS SECTION APPLY TO:

16           (a) THE ACTUAL PRICE PAID BY A REMOTE RETAIL SELLER FOR A  
17          STOCK KEEPING UNIT; OR

18           (b) IF THE ACTUAL PRICE PAID BY A REMOTE RETAIL SELLER IS NOT  
19          AVAILABLE, THE AVERAGE OF THE ACTUAL PRICE PAID BY A REMOTE  
20          RETAIL SELLER FOR A STOCK KEEPING UNIT DURING THE PRECEDING  
21          CALENDAR YEAR. REMOTE RETAIL SELLERS SHALL KEEP ALL RECORDS  
22          PRESCRIBED BY THE DEPARTMENT TO ESTABLISH THE VALIDITY OF  
23          SUBSECTION (1.5)(a) OF THIS SECTION AND THIS SUBSECTION (1.5)(b) TO  
24          THE DEPARTMENT'S SATISFACTION.

25           (4) The tax set forth in this section is collected by the department  
26          and is imposed at the time the distributor:

27           (c) Ships or transports tobacco products to retailers in this state to



- 1 be sold by those retailers; ~~or~~  
2 (d) Makes a delivery sale; OR  
3 (e) IS A REMOTE RETAIL SELLER.

4 **SECTION 3.** In Colorado Revised Statutes, **add** 39-28.5-104.7  
5 as follows:

6 **39-28.5-104.7. Licensing required of remote retail sellers -**  
7 **rules - fines.** IT IS UNLAWFUL FOR ANY PERSON TO ENGAGE IN THE  
8 BUSINESS OF MAKING REMOTE RETAIL SALES WITHOUT FIRST OBTAINING  
9 A LICENSE GRANTED AND ISSUED BY THE DEPARTMENT, WHICH LICENSE  
10 SHALL BE IN EFFECT UNTIL JUNE 30 FOLLOWING THE DATE OF ISSUE,  
11 UNLESS SOONER REVOKED. SUCH LICENSE SHALL BE GRANTED ONLY TO A  
12 PERSON WHO OWNS OR OPERATES THE PLACE FROM WHICH THE PERSON  
13 ENGAGES IN THE BUSINESS OF MAKING REMOTE RETAIL SALES OF CIGARS  
14 OR PIPE OR OTHER SMOKING TOBACCO, AND, IF SUCH BUSINESS IS  
15 OPERATED UNDER TWO OR MORE SEPARATE FEDERAL EMPLOYER  
16 IDENTIFICATION NUMBERS BY ANY SUCH PERSON, A SEPARATE LICENSE FOR  
17 EACH FEDERAL EMPLOYER IDENTIFICATION NUMBER SHALL BE REQUIRED.  
18 SUCH LICENSE SHALL BE RENEWED ONLY UPON TIMELY APPLICATION AND  
19 PAYMENT OF THE REQUIRED FEE PRIOR TO EXPIRATION. SUCH LICENSES  
20 MAY BE TRANSFERRED IN THE DISCRETION OF AND PURSUANT TO THE  
21 RULES ADOPTED BY THE DEPARTMENT. THE FEE FOR A LICENSE SHALL BE  
22 TEN DOLLARS PER YEAR, AND SUCH FEE SHALL BE CREDITED TO THE  
23 GENERAL FUND. SUCH FEE SHALL BE REDUCED AT THE RATE OF TWO  
24 DOLLARS AND FIFTY CENTS FOR EACH EXPIRED QUARTER OF THE LICENSE  
25 YEAR. THE DEPARTMENT SHALL, ON REASONABLE NOTICE AND AFTER A  
26 HEARING, SUSPEND OR REVOKE THE LICENSE OF ANY PERSON VIOLATING  
27 ANY PROVISION OF THIS ARTICLE 28.5, AND NO LICENSE SHALL BE ISSUED

1 TO SUCH PERSON WITHIN A PERIOD OF TWO YEARS THEREAFTER. THE  
2 DEPARTMENT SHALL REFUSE TO ISSUE A NEW OR RENEWAL REMOTE RETAIL  
3 SELLERS LICENSE, AND SHALL REVOKE A REMOTE RETAIL SELLER'S  
4 LICENSE, IF THE REMOTE RETAIL SELLER OWES THE STATE ANY  
5 DELINQUENT TAXES ADMINISTERED BY THE DEPARTMENT OR INTEREST  
6 THEREON PURSUANT TO THIS TITLE 39 THAT HAVE BEEN DETERMINED BY  
7 LAW TO BE DUE AND UNPAID, UNLESS THE REMOTE RETAIL SELLER HAS  
8 ENTERED INTO AN AGREEMENT APPROVED BY THE DEPARTMENT TO PAY  
9 THE AMOUNT DUE. THE DEPARTMENT SHALL ONLY ISSUE A NEW OR  
10 RENEWAL REMOTE RETAIL SELLER LICENSE TO A REMOTE RETAIL SELLER  
11 THAT HAS A CURRENT LICENSE ISSUED PURSUANT TO SECTION 39-26-103.

12 **SECTION 4.** In Colorado Revised Statutes, **add** 39-28.5-105.5  
13 as follows:

14 **39-28.5-105.5. Books and records to be preserved.** (1) EVERY  
15 REMOTE RETAIL SELLER SHALL KEEP AT EACH LICENSEE COMPLETE AND  
16 ACCURATE RECORDS FOR THAT LICENSEE PLACE OF BUSINESS, INCLUDING  
17 ITEMIZED INVOICES TO VALIDATE THE ACTUAL COST PAID BY THE REMOTE  
18 RETAIL SELLER FOR ALL TOBACCO PRODUCTS OFFERED IN REMOTE RETAIL  
19 SALES TO THE ULTIMATE CONSUMER WITHIN THIS STATE.

20 (2) THESE RECORDS SHALL SHOW THE NAMES AND ADDRESSES OF  
21 PURCHASERS, THE INVENTORY OF ALL TOBACCO PRODUCTS ON HAND, AND  
22 OTHER PERTINENT PAPERS AND DOCUMENTS RELATING TO THE AVERAGE  
23 OF THE ACTUAL PRICE PAID BY A REMOTE RETAIL SELLER FOR A STOCK  
24 KEEPING UNIT OVER THE YEAR PRECEDING ANY SALE.

25 (3) WHEN A LICENSED REMOTE RETAIL SELLER SELLS EXCLUSIVELY  
26 TO THE ULTIMATE CONSUMER WITHIN THIS STATE FROM THE FEDERAL  
27 EMPLOYER IDENTIFICATION NUMBER GIVEN IN THE LICENSE, NO INVOICE

1 OF THOSE SALES SHALL BE REQUIRED. ALL BOOKS, RECORDS, AND OTHER  
2 PAPERS AND DOCUMENTS REQUIRED BY THIS SECTION TO BE KEPT SHALL  
3 BE PRESERVED FOR A PERIOD OF AT LEAST THREE YEARS AFTER THE DATE  
4 OF THE DOCUMENTS, UNLESS THE DEPARTMENT, IN WRITING, AUTHORIZES  
5 THEIR DESTRUCTION OR DISPOSAL AT AN EARLIER DATE.

6 **SECTION 5.** In Colorado Revised Statutes, **add** 39-28.5-106.5  
7 as follows:

8 **39-28.5-106.5. Returns and remittance of tax - civil penalty.**

9 (1) A REMOTE RETAIL SELLER SHALL BE RESPONSIBLE FOR PAYMENT OF  
10 THE TAX IMPOSED UNDER SECTION 39-28.5-102.5 ONLY IF THE REMOTE  
11 RETAIL SELLER IS DOING BUSINESS IN THIS STATE, AS DEFINED IN SECTION  
12 39-26-102 (3).

13 (2) ONCE A REMOTE RETAIL SELLER HAS SATISFIED SUBSECTION (1)  
14 OF THIS SECTION, THE REMOTE RETAIL SELLER SHALL FILE A RETURN WITH  
15 THE DEPARTMENT EACH QUARTER. THE RETURN, WHICH SHALL BE UPON  
16 FORMS PRESCRIBED AND FURNISHED BY THE DEPARTMENT, SHALL  
17 CONTAIN, AMONG OTHER THINGS, THE TOTAL AMOUNT OF CIGARS AND PIPE  
18 TOBACCO PURCHASED BY THE REMOTE RETAIL SELLER AND SOLD IN A  
19 REMOTE RETAIL SALE DURING THE PRECEDING QUARTER AND THE TAX DUE  
20 THEREON.

21 (3) ONCE A REMOTE RETAIL SELLER HAS SATISFIED SUBSECTION (1)  
22 OF THIS SECTION, THE REMOTE RETAIL SELLER SHALL FILE A RETURN WITH  
23 THE DEPARTMENT BY THE TWENTIETH DAY OF THE MONTH FOLLOWING THE  
24 MONTH REPORTED AND SHALL THEREWITH REMIT THE AMOUNT OF TAX  
25 DUE, LESS ONE AND SIX-TENTHS PERCENT OF ANY SUM SO REMITTED THAT  
26 CONSISTS OF TAX COLLECTED ON OR AFTER JANUARY 1, 2021, TO COVER  
27 THE REMOTE RETAIL SELLER'S EXPENSE IN THE COLLECTION AND

1 REMITTANCE OF SAID TAX; EXCEPT THAT NO PART OF THE TAX IMPOSED  
2 PURSUANT TO SECTION 39-28.5-102.5 AND SECTION 21 OF ARTICLE X OF  
3 THE STATE CONSTITUTION SHALL BE SUBJECT TO THE DISCOUNT PROVIDED  
4 FOR IN THIS SUBSECTION (3). IF ANY REMOTE RETAIL SELLER IS  
5 DELINQUENT IN REMITTING SAID TAX, OTHER THAN IN UNUSUAL  
6 CIRCUMSTANCES SHOWN TO THE SATISFACTION OF THE EXECUTIVE  
7 DIRECTOR OF THE DEPARTMENT, THE DISTRIBUTOR SHALL NOT BE  
8 ALLOWED TO RETAIN ANY AMOUNTS TO COVER HIS OR HER EXPENSE IN  
9 COLLECTING AND REMITTING SAID TAX, AND, IN ADDITION, THE PENALTY  
10 IMPOSED UNDER SECTION 39-28.5-110 (2)(b) SHALL APPLY.

11 (4) (a) ANY PERSON, FIRM, LIMITED LIABILITY COMPANY,  
12 PARTNERSHIP, OR CORPORATION, OTHER THAN A REMOTE RETAIL SELLER,  
13 IN POSSESSION OF CIGARS AND PIPE TOBACCO FOR WHICH TAXES HAVE NOT  
14 OTHERWISE BEEN REMITTED PURSUANT TO THIS SECTION SHALL BE LIABLE  
15 AND RESPONSIBLE FOR THE UNCOLLECTED TAX THAT IS LEVIED PURSUANT  
16 TO SECTION 39-28.5-102 AND SECTION 21 OF ARTICLE X OF THE STATE  
17 CONSTITUTION ON BEHALF OF THE REMOTE RETAIL SELLER WHO FAILED TO  
18 PAY THE TAX. THE PERSON OR ENTITY SHALL MAKE THE PAYMENT TO THE  
19 DEPARTMENT WITHIN THIRTY DAYS OF FIRST TAKING POSSESSION OF THE  
20 PRODUCT. THE DEPARTMENT SHALL ESTABLISH A FORM TO BE USED FOR  
21 REMITTANCE OF THE PAYMENT. THE DEPARTMENT SHALL REMIT THE  
22 PROCEEDS IT RECEIVES PURSUANT TO THIS SUBSECTION (4)(a) TO THE  
23 STATE TREASURER FOR DISTRIBUTION AS FOLLOWS:

24 (I) FOR ALL MONEY RECEIVED AND COLLECTED IN PAYMENT OF  
25 THE TAX IMPOSED PURSUANT TO SECTION 39-28.5-102, FIFTEEN PERCENT  
26 SHALL BE CREDITED TO THE TOBACCO TAX ENFORCEMENT CASH FUND  
27 CREATED IN SECTION 39-28-107 (1)(b), AND EIGHTY-FIVE PERCENT SHALL

1 BE CREDITED TO THE OLD AGE PENSION FUND CREATED IN SECTION 1 OF  
2 ARTICLE XXIV OF THE STATE CONSTITUTION; AND

3 (II) ALL MONEY RECEIVED AND COLLECTED IN PAYMENT OF THE  
4 TAX IMPOSED PURSUANT TO SECTION 39-28.5-102.5 SHALL BE CREDITED  
5 TO THE TOBACCO TAX CASH FUND CREATED IN SECTION 24-22-117.

6 (b) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT MAY IMPOSE  
7 A CIVIL PENALTY ON ANY PERSON, FIRM, LIMITED LIABILITY COMPANY,  
8 PARTNERSHIP, OR CORPORATION IN POSSESSION OF CIGARS AND PIPE  
9 TOBACCO THAT FAILS TO MAKE A PAYMENT REQUIRED PURSUANT TO  
10 SUBSECTION (4)(a) OF THIS SECTION OR WHO IS A DISTRIBUTOR BY VIRTUE  
11 OF BEING THE FIRST PERSON WHO RECEIVES THE CIGARS AND PIPE  
12 TOBACCO IN THIS STATE AND WHO FAILS TO MAKE A PAYMENT REQUIRED  
13 PURSUANT TO THIS SECTION IN AN AMOUNT THAT DOES NOT EXCEED FIVE  
14 HUNDRED PERCENT OF SUCH PAYMENT. ANY MONEY RECEIVED PURSUANT  
15 TO THIS SUBSECTION (4)(b) SHALL BE REMITTED TO THE STATE TREASURER  
16 FOR DEPOSIT IN THE TOBACCO TAX ENFORCEMENT CASH FUND CREATED IN  
17 SECTION 39-28-107 (1)(b).

18 **SECTION 6.** In Colorado Revised Statutes, 39-28.5-107, **amend**  
19 (2)(a) and (2)(d) as follows:

20 **39-28.5-107. When credit may be obtained for tax paid.**

21 (2) (a) Credit shall be given by the department to a distributor for all  
22 taxes levied pursuant to this ~~article~~ ARTICLE 28.5 and section 21 of article  
23 X of the state constitution and paid pursuant to the provisions of this  
24 ~~article~~ ARTICLE 28.5 that are bad debts. Such credit shall offset taxes  
25 levied pursuant to this ~~article~~ ARTICLE 28.5 and section 21 of article X of  
26 the state constitution and paid pursuant to the provisions of this ~~article~~  
27 ARTICLE 28.5 only. No credit shall be given unless the bad debt has been

1 charged off as uncollectible on the books of the distributor. Subsequent  
2 to receiving the credit, if the distributor receives a payment for the bad  
3 debt, the distributor shall be liable to the department for the amount  
4 received and shall remit this amount in the next payment to the  
5 department under ~~section 39-28.5-106~~ SECTIONS 39-28.5-106 AND  
6 39-28.5-106.5.

7 (d) As used in this subsection (2), "bad debt" means the taxes  
8 attributable to any portion of a debt that is related to a sale of tobacco  
9 products subject to tax under this ~~article~~ ARTICLE 28.5, that is not  
10 otherwise deductible or excludable, that has become worthless or  
11 uncollectible in the time after the tax has been paid pursuant to ~~section~~  
12 ~~39-28.5-106~~ SECTIONS 39-28.5-106 AND 39-28.5-106.5, and that is  
13 eligible to be claimed as a deduction pursuant to section 166 of the  
14 federal "Internal Revenue Code of 1986", as amended. A bad debt shall  
15 not include any interest on the wholesale price of tobacco products,  
16 uncollectible amounts on property that remain in the possession of the  
17 distributor until the full purchase price is paid, expenses incurred in  
18 attempting to collect any account receivable or any portion of the debt  
19 recovered, an account receivable that has been sold to a third party for  
20 collection, or repossessed property.

21 **SECTION 7.** In Colorado Revised Statutes, 39-28.5-110, **amend**  
22 (2)(b) as follows:

23 **39-28.5-110. Prohibited acts - penalties.** (2) (b) If a person fails  
24 to pay the tax in the time allowed in ~~section 39-28.5-106 (2)~~ SECTIONS  
25 39-28.5-106 (2) AND 39-28.5-106.5 (3), a penalty equal to ten percent of  
26 such tax plus one-half of one percent per month from the date when due,  
27 not to exceed eighteen percent in the aggregate, together with interest on

1 such delinquent taxes at the rate computed under section 39-21-110.5,  
2 shall apply.

3 **SECTION 8.** In Colorado Revised Statutes, 39-28.6-102, **amend**  
4 (5), (7) introductory portion, and (7)(b); and **add** (9) as follows:

5 **39-28.6-102. Definitions.** As used in this article 28.6, unless the  
6 context otherwise requires:

7 (5) (a) "Manufacturer's list price" means, EXCEPT AS PROVIDED IN  
8 SUBSECTIONS (5)(b) AND (5)(c) OF THIS SECTION, the invoice price for  
9 which a manufacturer or supplier sells a nicotine product to a distributor  
10 exclusive of any discount or other reduction.

11 (b) FOR A DELIVERY SELLER, IF DETERMINING THE INVOICE PRICE  
12 DESCRIBED IN SUBSECTION (5)(a) OF THIS SECTION IS IMPRACTICABLE,  
13 THEN "MANUFACTURER'S LIST PRICE" MEANS THE AVERAGE OF THE  
14 ACTUAL PRICE PAID FOR THE NICOTINE PRODUCT'S STOCK KEEPING UNIT  
15 DURING THE PRECEDING CALENDAR YEAR. THE DEPARTMENT MAY, BY  
16 WRITTEN NOTICE TO THE DELIVERY SELLER, PROSPECTIVELY REQUIRE A  
17 DELIVERY SELLER TO CALCULATE THE TAX ON THE INVOICE PRICE IF THE  
18 DEPARTMENT FINDS THAT THE DELIVERY SELLER'S USE OF THE AVERAGE  
19 PRICE PAID WAS FOR THE PURPOSE OF AVOIDING TAX.

20 (c) FOR A MANUFACTURER WHO IS ALSO A DELIVERY SELLER OR A  
21 RETAILER, AND WHO SELLS A NICOTINE PRODUCT EXCLUSIVELY TO  
22 CONSUMERS AND NOT TO SUPPLIERS OR DISTRIBUTORS, "MANUFACTURER'S  
23 LIST PRICE" MEANS THE MANUFACTURER'S COST TO MANUFACTURE THE  
24 NICOTINE PRODUCT, WHICH INCLUDES THE MANUFACTURING OVERHEAD  
25 AND THE COST OF ALL DIRECT MATERIALS AND DIRECT LABOR USED.

26 (7) "Nicotine product" means a product IN SOLUTION OR LIQUID  
27 FORM that contains nicotine derived from tobacco or created synthetically

1 that is intended for human consumption, whether by vaporizing, chewing,  
2 smoking, absorbing, dissolving, inhaling, snorting, sniffing, aerosolizing,  
3 or by any other means OF INHALING, and that is not:

4 (b) Tobacco products, as defined in section 39-28.5-101 ~~(5)~~ (16);  
5 or

6 (9) "STOCK KEEPING UNIT" MEANS THE UNIQUE IDENTIFIER  
7 ASSIGNED BY THE DISTRIBUTOR TO VARIOUS ITEMS IN ORDER TO TRACK  
8 INVENTORY.

9 **SECTION 9.** In Colorado Revised Statutes, 18-8-204, **amend**  
10 (2)(m) as follows:

11 **18-8-204. Introducing contraband in the second degree -**  
12 **definition.** (2) As used in this section, "contraband" means any of the  
13 following, but does not include any article or thing referred to in section  
14 18-8-203:

15 (m) For purposes of a facility of the department of corrections or  
16 any private contract prison, any cigarettes or tobacco products, as defined  
17 in section 39-28.5-101 ~~(5)~~ (16);

18 **SECTION 10. Act subject to petition - effective date.** This act  
19 takes effect January 1, 2024; except that, if a referendum petition is filed  
20 pursuant to section 1 (3) of article V of the state constitution against this  
21 act or an item, section, or part of this act within the ninety-day period  
22 after final adjournment of the general assembly, then the act, item,  
23 section, or part will not take effect unless approved by the people at the  
24 general election to be held in November 2024 and, in such case, will take  
25 effect January 1, 2024, or on the date of the official declaration of the  
26 vote thereon by the governor, whichever is later.



First Regular Session  
Seventy-fourth General Assembly  
STATE OF COLORADO

Attachment C

**BILL C**

LLS NO. 23-0125.01 Megan McCall x4215

**HOUSE BILL**

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**HOUSE SPONSORSHIP**

**Benavidez, Bird**

**SENATE SPONSORSHIP**

**Hansen and Kolker,**

---

**House Committees**

**Senate Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING THE ENLARGEMENT OF CERTAIN INCOME TAX CREDITS**  
102              **FOR LOW- AND MIDDLE-INCOME WORKING INDIVIDUALS OR**  
103              **FAMILIES, AND, IN CONNECTION THEREWITH, REDUCING STATE**  
104              **INCOME TAX REVENUE BY INCREASING THE EARNED INCOME TAX**  
105              **CREDIT AND EXPANDING ELIGIBILITY FOR AND INCREASING THE**  
106              **CHILD TAX CREDIT.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Legislative Oversight Committee Concerning Tax Policy. For**

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

income tax years commencing on or after January 1, 2024, the bill increases the earned income tax credit that a resident individual can claim on their state income tax return to 40% of the federal credit claimed on the resident individual's federal income tax return. For income tax years commencing on or after January 1, 2024, the bill changes the definition of "eligible child" to match the age of eligibility for the federal credit, increases percentages of the federal credit that a resident individual can claim for the child tax credit on their state income tax return by 20%, 10%, or 5% depending on the resident individual's income level, and requires the department of revenue to adjust for inflation the income levels set forth to determine eligibility for the credit.

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*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, 39-22-123.5, **amend** (2)(a), (2)(b), (2)(c)(I), (2.5)(a), (2.5)(b), (2.5)(d)(I), (2.7)(a), and (2.7)(b)(I); and **add** (2)(d), (2.5)(e), and (2.7)(c) as follows:

**39-22-123.5. Earned income tax credit - not a refund of excess state revenues - trigger - legislative declaration - repeal.** (2) (a) (I) For an income tax year commencing prior to January 1, 2022, a resident individual who claims an earned income tax credit on the individual's federal tax return is allowed an earned income tax credit against the taxes due under this article 22 that is equal to ten percent of the federal credit that the resident individual claimed on his or her federal tax return for the same tax year.

(II) THIS SUBSECTION (2)(a) IS REPEALED, EFFECTIVE DECEMBER 31, 2032.

(b) (I) For income tax years commencing on or after January 1, 2022, but before January 1, 2023, ~~and income tax years commencing on or after January 1, 2026,~~ a resident individual who claims an earned income tax credit on the individual's federal tax return is allowed an earned income tax credit against the taxes due under this article 22 that

1 is equal to twenty percent of the federal credit that the resident individual  
2 claimed on his or her federal tax return for the same tax year.

3 (II) THIS SUBSECTION (2)(b) IS REPEALED, EFFECTIVE DECEMBER  
4 31, 2033.

5 (c) (I) For income tax years commencing on or after January 1,  
6 2023, but before January 1, ~~2026~~ 2024, a resident individual who claims  
7 an earned income tax credit on the individual's federal tax return is  
8 allowed an earned income tax credit against the taxes due under this  
9 article 22 that is equal to twenty-five percent of the federal credit that the  
10 resident individual claimed on his or her federal tax return for the same  
11 tax year.

12 (d) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY  
13 1, 2024, A RESIDENT INDIVIDUAL WHO CLAIMS AN EARNED INCOME TAX  
14 CREDIT ON THE INDIVIDUAL'S FEDERAL TAX RETURN IS ALLOWED AN  
15 EARNED INCOME TAX CREDIT AGAINST THE TAXES DUE UNDER THIS  
16 ARTICLE 22 THAT IS EQUAL TO FORTY PERCENT OF THE FEDERAL CREDIT  
17 THAT THE RESIDENT INDIVIDUAL CLAIMED ON HIS OR HER FEDERAL TAX  
18 RETURN FOR THE SAME TAX YEAR.

19 (2.5) (a) (I) For income tax years commencing on or after January  
20 1, 2020, but before January 1, 2022, a resident individual is allowed an  
21 earned income tax credit against the taxes due under this article 22 that  
22 is equal to ten percent of the federal credit that the resident individual  
23 would have been allowed, but for the fact that the resident individual, the  
24 resident individual's spouse, or one or more of the resident individual's  
25 dependents do not have a social security number that is valid for  
26 employment.

27 (II) THIS SUBSECTION (2.5)(a) IS REPEALED, EFFECTIVE DECEMBER

1 31, 2032.

2 (b) (I) For income tax years commencing on or after January 1,  
3 2022, but before January 1, 2023, ~~and income tax years commencing on~~  
4 ~~or after January 1, 2026~~, a resident individual is allowed an earned  
5 income tax credit against the taxes due under this article 22 that is equal  
6 to twenty percent of the federal credit that the resident individual would  
7 have been allowed, but for the fact that the resident individual, the  
8 resident individual's spouse, or one or more of the resident individual's  
9 dependents do not have a social security number that is valid for  
10 employment.

11 (II) THIS SUBSECTION (2.5)(b) IS REPEALED, EFFECTIVE DECEMBER  
12 31, 2033.

13 (d) (I) For income tax years commencing on or after January 1,  
14 2023, but before January 1, ~~2026~~ 2024, a resident individual is allowed  
15 an earned income tax credit against the taxes due under this article 22 that  
16 is equal to twenty-five percent of the federal credit that the resident  
17 individual would have been allowed, but for the fact that the resident  
18 individual, the resident individual's spouse, or one or more of the resident  
19 individual's dependents do not have a social security number that is valid  
20 for employment.

21 (e) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY  
22 1, 2024, A RESIDENT INDIVIDUAL IS ALLOWED AN EARNED INCOME TAX  
23 CREDIT AGAINST THE TAXES DUE UNDER THIS ARTICLE 22 THAT IS EQUAL  
24 TO FORTY PERCENT OF THE FEDERAL CREDIT THAT THE RESIDENT  
25 INDIVIDUAL WOULD HAVE BEEN ALLOWED, BUT FOR THE FACT THAT THE  
26 RESIDENT INDIVIDUAL, THE RESIDENT INDIVIDUAL'S SPOUSE, OR ONE OR  
27 MORE OF THE RESIDENT INDIVIDUAL'S DEPENDENTS DO NOT HAVE A SOCIAL

1 SECURITY NUMBER THAT IS VALID FOR EMPLOYMENT.

2 (2.7) (a) (I) For income tax years commencing on or after January  
3 1, 2022, but before January 1, 2023, ~~and income tax years commencing~~  
4 ~~on or after January 1, 2026~~, a resident individual is allowed an earned  
5 income tax credit against the taxes due under this article 22 that is equal  
6 to twenty percent of the federal credit that the resident individual would  
7 have been allowed under section 32 (n)(1) of the internal revenue code,  
8 notwithstanding the date limitation set forth in section 32 (n) of the  
9 internal revenue code as specified in section 9621 (a) of the "American  
10 Rescue Plan Act of 2021", Pub.L. 117-2.

11 (II) THIS SUBSECTION (2.7)(a) IS REPEALED, EFFECTIVE DECEMBER  
12 31, 2033.

13 (b) (I) For income tax years commencing on or after January 1,  
14 2023, but before January 1, ~~2026~~ 2024, a resident individual is allowed  
15 an earned income tax credit against the taxes due under this article 22 that  
16 is equal to twenty-five percent of the federal credit that the resident  
17 individual would have been allowed under section 32 (n)(1) of the  
18 internal revenue code, notwithstanding the date limitation set forth in  
19 section 32 (n) of the internal revenue code as specified in section 9621 (a)  
20 of the "American Rescue Plan Act of 2021", Pub.L. 117-2.

21 (c) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY  
22 1, 2024, A RESIDENT INDIVIDUAL IS ALLOWED AN EARNED INCOME TAX  
23 CREDIT AGAINST THE TAXES DUE UNDER THIS ARTICLE 22 THAT IS EQUAL  
24 TO FORTY PERCENT OF THE FEDERAL CREDIT THAT THE RESIDENT  
25 INDIVIDUAL WOULD HAVE BEEN ALLOWED UNDER SECTION 32 (n)(1) OF  
26 THE INTERNAL REVENUE CODE, NOTWITHSTANDING THE DATE LIMITATION  
27 SET FORTH IN SECTION 32 (n) OF THE INTERNAL REVENUE CODE AS

1 SPECIFIED IN SECTION 9621 (a) OF THE "AMERICAN RESCUE PLAN ACT OF  
2 2021", PUB.L. 117-2.

3 **SECTION 2.** In Colorado Revised Statutes, 39-22-129, **amend**  
4 (2)(a), (3), (3.5), and (4); and **add** (4.5) and (8) as follows:

5 **39-22-129. Child tax credit - legislative declaration -**  
6 **definitions.** (2) As used in this section:

7 (a) "Eligible child" means a qualifying child for purposes of the  
8 federal child tax credit; ~~who is~~ EXCEPT THAT, FOR INCOME TAX YEARS  
9 COMMENCING ON OR AFTER JANUARY 1, 2022, BUT BEFORE JANUARY 1,  
10 2024, AN ELIGIBLE CHILD MUST ALSO BE under six years of age at the end  
11 of the taxable year for which the credit is claimed.

12 (3) (a) Except as provided in subsection (4) of this section, ~~for~~  
13 ~~income tax years commencing on or after January 1, 2022,~~ a resident  
14 individual who claims a federal child tax credit for an eligible child on the  
15 individual's federal tax return is allowed a child tax credit in the amount  
16 set forth in subsection (3)(b) or (3)(c) of this section against the income  
17 taxes due under this article 22 for the same tax year.

18 (b) (I) For a resident individual who files a single return, the  
19 amount of the credit is equal to:

20 (A) Thirty percent FOR INCOME TAX YEARS COMMENCING ON OR  
21 AFTER JANUARY 1, 2022, BUT BEFORE JANUARY 1, 2024, AND FIFTY  
22 PERCENT FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1,  
23 2024, of the federal child tax credit that the resident individual claimed  
24 on his or her federal tax return for each eligible child, if the individual's  
25 federal adjusted gross income is twenty-five thousand dollars or less;

26 (B) Fifteen percent FOR INCOME TAX YEARS COMMENCING ON OR  
27 AFTER JANUARY 1, 2022, BUT BEFORE JANUARY 1, 2024, AND TWENTY

1 PERCENT FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1,  
2 2024, of the federal child tax credit that the resident individual claimed  
3 on his or her federal tax return for each eligible child, if the individual's  
4 federal adjusted gross income is greater than twenty-five thousand dollars  
5 but less than or equal to fifty thousand dollars; and

6 (C) Five percent FOR INCOME TAX YEARS COMMENCING ON OR  
7 AFTER JANUARY 1, 2022, BUT BEFORE JANUARY 1, 2024, AND TEN  
8 PERCENT FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1,  
9 2024, of the federal child tax credit that the resident individual claimed  
10 on his or her federal tax return for each eligible child, if the individual's  
11 federal adjusted gross income is greater than fifty thousand dollars but  
12 less than or equal to seventy-five thousand dollars.

13 (II) ~~A resident individual who files a single return and whose~~  
14 ~~federal adjusted gross income is greater than seventy-five thousand~~  
15 ~~dollars is not allowed a credit under this section.~~

16 (c) (I) For two resident individuals who file a joint return, the  
17 amount of the credit is equal to:

18 (A) Thirty percent FOR INCOME TAX YEARS COMMENCING ON OR  
19 AFTER JANUARY 1, 2022, BUT BEFORE JANUARY 1, 2024, AND FIFTY  
20 PERCENT FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1,  
21 2024, of the federal child tax credit that the resident individuals claimed  
22 on their federal tax return for each eligible child, if the individuals'  
23 federal adjusted gross income is thirty-five thousand dollars or less;

24 (B) Fifteen percent FOR INCOME TAX YEARS COMMENCING ON OR  
25 AFTER JANUARY 1, 2022, BUT BEFORE JANUARY 1, 2024, AND TWENTY  
26 PERCENT FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1,  
27 2024, of the federal child tax credit that the resident individuals claimed

1 on their federal tax return for each eligible child, if the individuals'  
2 federal adjusted gross income is greater than thirty-five thousand dollars  
3 but less than or equal to sixty thousand dollars; and

4 (C) Five percent FOR INCOME TAX YEARS COMMENCING ON OR  
5 AFTER JANUARY 1, 2022, BUT BEFORE JANUARY 1, 2024, AND TEN  
6 PERCENT FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1,  
7 2024, of the federal child tax credit that the resident individuals claimed  
8 on their federal tax return for each eligible child, if the individuals'  
9 federal adjusted gross income is greater than sixty thousand dollars but  
10 less than or equal to eighty-five thousand dollars.

11 ~~(II) Two resident individuals who file a joint return and whose~~  
12 ~~federal adjusted gross income is greater than eighty-five thousand dollars~~  
13 ~~are not allowed a credit under this section.~~

14 (3.5) (a) Except as provided in subsection (4) of this section, ~~for~~  
15 ~~income tax years commencing on or after January 1, 2022,~~ a resident  
16 individual who could have claimed a federal child tax credit for an  
17 eligible child on the individual's federal tax return had section 24 (h)(7)  
18 of the internal revenue code not applied to the definition of qualifying  
19 child, is allowed a child tax credit in the amount set forth in subsection  
20 (3.5)(b) or (3.5)(c) of this section against the income taxes due under this  
21 article 22 for the same tax year.

22 (b) (I) For a resident individual who files a single return, the  
23 amount of the credit is equal to:

24 (A) Thirty percent FOR INCOME TAX YEARS COMMENCING ON OR  
25 AFTER JANUARY 1, 2022, BUT BEFORE JANUARY 1, 2024, AND FIFTY  
26 PERCENT FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1,  
27 2024, of the federal child tax credit that the resident individual could have



1 claimed on their federal tax return for each eligible child, if the  
2 individual's federal adjusted gross income is twenty-five thousand dollars  
3 or less;

4 (B) Fifteen percent FOR INCOME TAX YEARS COMMENCING ON OR  
5 AFTER JANUARY 1, 2022, BUT BEFORE JANUARY 1, 2024, AND TWENTY  
6 PERCENT FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1,  
7 2024, of the federal child tax credit that the resident individual could have  
8 claimed on their federal tax return for each eligible child, if the  
9 individual's federal adjusted gross income is greater than twenty-five  
10 thousand dollars but less than or equal to fifty thousand dollars; and

11 (C) Five percent FOR INCOME TAX YEARS COMMENCING ON OR  
12 AFTER JANUARY 1, 2022, BUT BEFORE JANUARY 1, 2024, AND TEN  
13 PERCENT FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1,  
14 2024, of the federal child tax credit that the resident individual could have  
15 claimed on their federal tax return for each eligible child, if the  
16 individual's federal adjusted gross income is greater than fifty thousand  
17 dollars but less than or equal to seventy-five thousand dollars.

18 (II) ~~A resident individual who files a single return and whose~~  
19 ~~federal adjusted gross income is greater than seventy-five thousand~~  
20 ~~dollars is not allowed a credit under this section.~~

21 (c) (I) For two resident individuals who file a joint return, the  
22 amount of the credit is equal to:

23 (A) Thirty percent FOR INCOME TAX YEARS COMMENCING ON OR  
24 AFTER JANUARY 1, 2022, BUT BEFORE JANUARY 1, 2024, AND FIFTY  
25 PERCENT FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1,  
26 2024, of the federal child tax credit that the resident individuals could  
27 have claimed on their federal tax return for each eligible child, if the

1 individuals' federal adjusted gross income is thirty-five thousand dollars  
2 or less;

3 (B) Fifteen percent FOR INCOME TAX YEARS COMMENCING ON OR  
4 AFTER JANUARY 1, 2022, BUT BEFORE JANUARY 1, 2024, AND TWENTY  
5 PERCENT FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1,  
6 2024, of the federal child tax credit that the resident individuals could  
7 have claimed on their federal tax return for each eligible child, if the  
8 individuals' federal adjusted gross income is greater than thirty-five  
9 thousand dollars but less than or equal to sixty thousand dollars; and

10 (C) Five percent FOR INCOME TAX YEARS COMMENCING ON OR  
11 AFTER JANUARY 1, 2022, BUT BEFORE JANUARY 1, 2024, AND TEN  
12 PERCENT FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1,  
13 2024, of the federal child tax credit that the resident individuals could  
14 have claimed on their federal tax return for each eligible child, if the  
15 individuals' federal adjusted gross income is greater than sixty thousand  
16 dollars but less than or equal to eighty-five thousand dollars.

17 ~~(II) Two resident individuals who file a joint return and whose~~  
18 ~~federal adjusted gross income is greater than eighty-five thousand dollars~~  
19 ~~are not allowed a credit under this section.~~

20 (4) ~~In any income tax year commencing on or after January 1,~~  
21 ~~2022,~~ If the changes specified in section 9611 of the "American Rescue  
22 Plan Act of 2021", Pub.L. 117-2, are no longer applicable to the federal  
23 child tax credit allowed in section 24 of the internal revenue code, then  
24 the amount of the child tax credit allowed in this section is as follows:

25 (a) (I) For a resident individual who files a single return, the  
26 amount of the credit is equal to:

27 (A) Sixty percent FOR INCOME TAX YEARS COMMENCING ON OR

1 AFTER JANUARY 1, 2022, BUT BEFORE JANUARY 1, 2024, AND SEVENTY  
2 PERCENT FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1,  
3 2024, of the federal child tax credit that the resident individual claimed  
4 or could have claimed on their federal tax return for each eligible child,  
5 if the individual's federal adjusted gross income is twenty-five thousand  
6 dollars or less;

7 (B) Thirty percent FOR INCOME TAX YEARS COMMENCING ON OR  
8 AFTER JANUARY 1, 2022, BUT BEFORE JANUARY 1, 2024, AND FORTY  
9 PERCENT FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1,  
10 2024, of the federal child tax credit that the resident individual claimed  
11 or could have claimed on their federal tax return for each eligible child,  
12 if the individual's federal adjusted gross income is greater than  
13 twenty-five thousand dollars but less than or equal to fifty thousand  
14 dollars; and

15 (C) Ten percent FOR INCOME TAX YEARS COMMENCING ON OR  
16 AFTER JANUARY 1, 2022, BUT BEFORE JANUARY 1, 2024, AND TWENTY  
17 PERCENT FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1,  
18 2024, of the federal child tax credit that the resident individual claimed  
19 or could have claimed on their federal tax return for each eligible child,  
20 if the individual's federal adjusted gross income is greater than fifty  
21 thousand dollars but less than or equal to seventy-five thousand dollars.

22 (II) ~~A resident individual who files a single return and whose~~  
23 ~~federal adjusted gross income is greater than seventy-five thousand~~  
24 ~~dollars is not allowed a credit under this section.~~

25 (b) (I) For two resident individuals who file a joint return, the  
26 amount of the credit is equal to:

27 (A) Sixty percent FOR INCOME TAX YEARS COMMENCING ON OR

1 AFTER JANUARY 1, 2022, BUT BEFORE JANUARY 1, 2024, AND SEVENTY  
2 PERCENT FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1,  
3 2024, of the federal child tax credit that the resident individuals claimed  
4 or could have claimed on their federal tax return for each eligible child,  
5 if the individuals' federal adjusted gross income is thirty-five thousand  
6 dollars or less;

7 (B) Thirty percent FOR INCOME TAX YEARS COMMENCING ON OR  
8 AFTER JANUARY 1, 2022, BUT BEFORE JANUARY 1, 2024, AND FORTY  
9 PERCENT FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1,  
10 2024, of the federal child tax credit that the resident individuals claimed  
11 or could have claimed on their federal tax return for each eligible child,  
12 if the individuals' federal adjusted gross income is greater than thirty-five  
13 thousand dollars but less than or equal to sixty thousand dollars; and

14 (C) Ten percent FOR INCOME TAX YEARS COMMENCING ON OR  
15 AFTER JANUARY 1, 2022, BUT BEFORE JANUARY 1, 2024, AND TWENTY  
16 PERCENT FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1,  
17 2024, of the federal child tax credit that the resident individuals claimed  
18 or could have claimed on their federal tax return for each eligible child,  
19 if the individuals' federal adjusted gross income is greater than sixty  
20 thousand dollars but less than or equal to eighty-five thousand dollars.

21 ~~(II) Two resident individuals who file a joint return and whose~~  
22 ~~federal adjusted gross income is greater than eighty-five thousand dollars~~  
23 ~~are not allowed a credit under this section.~~

24 (4.5) (a) A RESIDENT INDIVIDUAL WHO FILES A SINGLE RETURN  
25 AND WHOSE FEDERAL ADJUSTED GROSS INCOME IS GREATER THAN  
26 SEVENTY-FIVE THOUSAND DOLLARS IS NOT ALLOWED A CREDIT UNDER  
27 THIS SECTION.

1           (b) TWO RESIDENT INDIVIDUALS WHO FILE A JOINT RETURN AND  
2           WHOSE FEDERAL ADJUSTED GROSS INCOME IS GREATER THAN EIGHTY-FIVE  
3           THOUSAND DOLLARS ARE NOT ALLOWED A CREDIT UNDER THIS SECTION.

4           (8) (a) FOR INCOME TAX YEARS COMMENCING ON OR AFTER  
5           JANUARY 1, 2024, THE DEPARTMENT OF REVENUE SHALL ADJUST THE  
6           FEDERAL ADJUSTED GROSS INCOME AMOUNTS SET FORTH IN SUBSECTIONS  
7           (3)(b)(I), (3)(c)(I), (3.5)(b)(I), (3.5)(c)(I), (4)(a)(I), (4)(b)(I), AND (4.5) OF  
8           THIS SECTION TO REFLECT INFLATION FOR EACH INCOME TAX YEAR IN  
9           WHICH THE CREDIT DESCRIBED IN THIS SECTION IS ALLOWED.

10          (b) AS USED IN THIS SUBSECTION (8), "INFLATION" MEANS THE  
11          ANNUAL PERCENTAGE CHANGE IN THE UNITED STATES DEPARTMENT OF  
12          LABOR BUREAU OF LABOR STATISTICS CONSUMER PRICE INDEX FOR  
13          DENVER-AURORA-LAKEWOOD FOR ALL ITEMS PAID BY ALL URBAN  
14          CONSUMERS, OR ITS APPLICABLE SUCCESSOR INDEX.

15          **SECTION 3. Act subject to petition - effective date.** This act  
16          takes effect at 12:01 a.m. on the day following the expiration of the  
17          ninety-day period after final adjournment of the general assembly; except  
18          that, if a referendum petition is filed pursuant to section 1 (3) of article V  
19          of the state constitution against this act or an item, section, or part of this  
20          act within such period, then the act, item, section, or part will not take  
21          effect unless approved by the people at the general election to be held in  
22          November 2024 and, in such case, will take effect on the date of the  
23          official declaration of the vote thereon by the governor.

First Regular Session  
Seventy-fourth General Assembly  
STATE OF COLORADO

Attachment D

**BILL D**

LLS NO. 23-0127.01 Pierce Lively x2059

**HOUSE BILL**

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**HOUSE SPONSORSHIP**

**Benavidez,**

**SENATE SPONSORSHIP**

**Hansen and Kolker,** Liston

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**House Committees**

**Senate Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING THE MODIFICATION OF THE STATE INCOME TAX CREDIT**  
102                    **FOR PURCHASING LONG-TERM CARE INSURANCE.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Legislative Oversight Committee Concerning Tax Policy.** For income tax years beginning January 1, 2024, the bill both:

- Increases the amount of federal taxable income taxpayers may have and still qualify for the state income tax credit for purchasing long-term care insurance and annually adjusts

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

- that amount of federal taxable income for inflation; and  
Doubles the amount of the credit that a taxpayer may claim and annually adjusts the credit for inflation.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 39-22-122, **amend**  
3 (2) and (3); and **add** (3.5) as follows:

4 **39-22-122. Long-term care insurance credit - definition.**

5 (2) Notwithstanding any other provision of this section, ~~to the contrary,~~  
6 a credit shall only be allowed: ~~to:~~

7 (a) FOR INCOME TAX YEARS COMMENCING PRIOR TO JANUARY 1,  
8 2024, TO:

9 ~~(a)~~ (I) An individual filing a single return with a federal taxable  
10 income of less than fifty thousand dollars for the tax year for which the  
11 credit is claimed;

12 ~~(b)~~ (II) Two individuals filing a joint return with a federal taxable  
13 income of less than fifty thousand dollars for the tax year for which the  
14 credit is claimed if claiming the credit for one policy; or

15 ~~(c)~~ (III) Two individuals filing a joint return with a federal taxable  
16 income of less than one hundred thousand dollars for the tax year for  
17 which the credit is claimed if claiming the credit for two policies or for  
18 a joint policy that covers each individual separately.

19 (b) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY  
20 1, 2024, TO:

21 (I) AN INDIVIDUAL FILING A SINGLE RETURN WITH A FEDERAL  
22 TAXABLE INCOME OF LESS THAN ONE HUNDRED THOUSAND DOLLARS FOR  
23 THE TAX YEAR FOR WHICH THE CREDIT IS CLAIMED;

24 (II) TWO INDIVIDUALS FILING A JOINT RETURN WITH A FEDERAL

1 TAXABLE INCOME OF LESS THAN ONE HUNDRED THOUSAND DOLLARS FOR  
 2 THE TAX YEAR FOR WHICH THE CREDIT IS CLAIMED IF CLAIMING THE  
 3 CREDIT FOR ONE POLICY; OR

4 (III) TWO INDIVIDUALS FILING A JOINT RETURN WITH A FEDERAL  
 5 TAXABLE INCOME OF LESS THAN TWO HUNDRED THOUSAND DOLLARS FOR  
 6 THE TAX YEAR FOR WHICH THE CREDIT IS CLAIMED IF CLAIMING THE  
 7 CREDIT FOR TWO POLICIES OR FOR A JOINT POLICY THAT COVERS EACH  
 8 INDIVIDUAL SEPARATELY.

9 (3) Notwithstanding any other provision of this section, ~~to the~~  
 10 ~~contrary~~, FOR INCOME TAX YEARS COMMENCING:

11 (a) PRIOR TO JANUARY 1, 2024, the amount of credit claimed  
 12 pursuant to this section shall not exceed one hundred fifty dollars for each  
 13 policy for which a credit is claimed pursuant to this section.

14 (b) ON OR AFTER JANUARY 1, 2024, THE AMOUNT OF CREDIT  
 15 CLAIMED PURSUANT TO THIS SECTION SHALL NOT EXCEED THREE HUNDRED  
 16 DOLLARS FOR EACH POLICY FOR WHICH A CREDIT IS CLAIMED PURSUANT TO  
 17 THIS SECTION.

18 (3.5) (a) FOR INCOME TAX YEARS COMMENCING ON OR AFTER  
 19 JANUARY 1, 2024, THE DEPARTMENT SHALL ADJUST THE FOLLOWING TO  
 20 REFLECT INFLATION FOR EACH INCOME TAX YEAR IN WHICH THE CREDIT  
 21 DESCRIBED IN THIS SECTION IS ALLOWED:

22 (I) THE FEDERAL TAXABLE INCOME LIMITS SET FORTH IN  
 23 SUBSECTION (2)(b) OF THIS SECTION; AND

24 (II) THE MAXIMUM AMOUNT OF CREDIT THAT A TAXPAYER MAY  
 25 CLAIM AS SET FORTH IN SUBSECTION (3) OF THIS SECTION.

26 (b) AS USED IN SUBSECTION (3.5)(a) OF THIS SECTION, "INFLATION"  
 27 MEANS THE ANNUAL PERCENTAGE CHANGE IN THE UNITED STATES



1 DEPARTMENT OF LABOR BUREAU OF LABOR STATISTICS CONSUMER PRICE  
2 INDEX FOR DENVER-AURORA-LAKEWOOD FOR ALL ITEMS PAID BY ALL  
3 URBAN CONSUMERS, OR ITS APPLICABLE SUCCESSOR INDEX.

4       **SECTION 2. Act subject to petition - effective date.** This act  
5 takes effect January 1, 2024; except that, if a referendum petition is filed  
6 pursuant to section 1 (3) of article V of the state constitution against this  
7 act or an item, section, or part of this act within the ninety-day period  
8 after final adjournment of the general assembly, then the act, item,  
9 section, or part will not take effect unless approved by the people at the  
10 general election to be held in November 2024 and, in such case, will take  
11 effect on the date of the official declaration of the vote thereon by the  
12 governor.

**First Regular Session  
Seventy-fourth General Assembly  
STATE OF COLORADO**

Attachment E

**BILL E**

LLS NO. 23-0130.01 Megan McCall x4215

**HOUSE BILL**

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**HOUSE SPONSORSHIP**

**Benavidez,**

**SENATE SPONSORSHIP**

**Hansen,** Liston

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**House Committees**

**Senate Committees**

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**A BILL FOR AN ACT**

101      **CONCERNING HARMONIZATION OF THE UNAUTHORIZED INSURANCE**  
102              **PREMIUM TAX RATE WITH THE SURPLUS LINES INSURANCE**  
103              **PREMIUM TAX RATE.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Legislative Oversight Committee Concerning Tax Policy.** The bill increases the unauthorized insurance premium tax rate from 2.25% to 3% in parity with the surplus lines insurance tax rate.

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Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

1     *Be it enacted by the General Assembly of the State of Colorado:*

2             **SECTION 1. Legislative declaration.** (1) The general assembly  
3 hereby finds and declares that:

4             (a) There is a policy interest in ensuring tax parity so that insureds  
5 are subject to the same rates of taxation;

6             (b) The current tax rate for unauthorized insurance premiums is  
7 a different rate than the rate of taxation on premiums for surplus line  
8 coverage from nonadmitted insurers;

9             (c) Increasing the tax rate for unauthorized insurance premiums  
10 to 3% to achieve tax parity is an incidental change because the purpose  
11 of the change is to achieve tax parity and not to raise revenue;

12            (d) Increasing the tax rate for unauthorized insurance premiums  
13 to 3% is also a de minimis change because the cost of an election on the  
14 question of increasing the unauthorized insurance premium tax rate by  
15 0.75% from 2.25% to 3% would exceed the additional revenue obtained  
16 by the tax rate increase; and

17            (e) Because increasing the tax rate for unauthorized insurance  
18 premiums from 2.25% to 3% is both incidental and de minimis, the  
19 Colorado supreme court's holdings in *Mesa County Bd. of County*  
20 *Comm'rs v. State*, 203 P.3d 519 (Colo. 2009), and *TABOR Found. v. Reg'l*  
21 *Transp. Dist.*, 2018 CO 29, make clear that requiring voter approval for  
22 the increase would reflect an interpretation of the Taxpayer's Bill of  
23 Rights, article X, section 20 of the state constitution, that would  
24 unreasonably curtail the everyday functions of government and yield an  
25 absurd result that the voters who approved that constitutional provision  
26 could not have intended.

27            **SECTION 2.** In Colorado Revised Statutes, 10-3-909, **amend** (1)

1 as follows:

2 **10-3-909. Unauthorized insurance premium tax.** (1) Except as  
3 to premiums that are subject to a federal premium, excise, or stamp tax  
4 equal to or in excess of ~~two and one-fourth~~ THREE percent of net  
5 premiums, and except as to premiums on independently procured  
6 insurance on which tax has been paid pursuant to section 10-3-209,  
7 10-5-111, or 10-5-111.5, every insured under a contract procured from an  
8 unauthorized insurer shall pay to the division of insurance before March  
9 1 next succeeding the calendar year in which the insurance was so  
10 effectuated, continued, or renewed a premium tax of ~~two and one-quarter~~  
11 THREE percent of net premiums charged for the insurance. Such insurance  
12 on subjects resident, located, or to be performed in this state procured  
13 through negotiations or an application, in whole or in part occurring or  
14 made within or from within or outside of this state, or for which  
15 premiums in whole or in part are remitted directly or indirectly from  
16 within or outside of this state, is deemed to be insurance procured,  
17 continued, or renewed in this state. The term "premium" includes all  
18 premiums, membership fees, assessments, dues, and any other  
19 consideration for insurance. If the tax prescribed by this section is not  
20 paid within the time stated, the tax is increased by a penalty of  
21 twenty-five percent and by the amount of an additional penalty computed  
22 at the rate of one percent per month or any part thereof from the date the  
23 payment was due to the date paid.

24 **SECTION 3. Act subject to petition - effective date -**  
25 **applicability.** (1) This act takes effect January 1, 2024; except that, if a  
26 referendum petition is filed pursuant to section 1 (3) of article V of the  
27 state constitution against this act or an item, section, or part of this act

1 within the ninety-day period after final adjournment of the general  
2 assembly, then the act, item, section, or part will not take effect unless  
3 approved by the people at the general election to be held in November  
4 2024 and, in such case, will take effect on the date of the official  
5 declaration of the vote thereon by the governor.

6 (2) This act applies to policies for unauthorized insurance issued  
7 on or after the applicable effective date of this act.